

PCB PIE 22-01

2022

1 A bill to be entitled
2 An act relating to implementation of the
3 constitutional prohibition against lobbying by a
4 public officer; creating s. 112.3121, F.S.; providing
5 definitions for the purpose of implementing the
6 constitutional prohibition against lobbying by a
7 public officer; creating s. 112.3122, F.S.; providing
8 applicability; providing for administration; requiring
9 the Commission on Ethics to report certain findings
10 and recommendations to the Governor; providing
11 penalties for a violation of the constitutional
12 prohibition against lobbying by a public officer;
13 authorizing collection of such penalties by specified
14 entities; providing an effective date.

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16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Section 112.3121, Florida Statutes, is created
19 to read:

20 112.3121 Definitions.—As used in this section and for
21 purposes of implementing s. 8(f), Art. II of the State
22 Constitution, the term:

23 (1) "Administrative action" means any process or decision
24 regulated by chapter 120 or, for a state government body or
25 agency or a political subdivision not subject to chapter 120,

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26 any action or a decision on a license, permit, waiver of
27 regulation, development order or permit, development agreement,
28 or any other administrative procedure or procedure governed by
29 existing law, ordinance, rule, or regulation, except on an issue
30 of procurement.

31 (2) "Compensation" means a payment, distribution, loan,
32 advance, reimbursement, deposit, salary, fee, retainer, or
33 anything of value provided or owed to a recipient, directly or
34 indirectly, from any source for lobbying activity.

35 (3) "Executive director" means the chief administrative
36 employee or officer of a department headed by a board or by the
37 Governor and Cabinet.

38 (4) "Federal government" means the United States Congress,
39 any federal executive branch department, office, agency, or
40 instrumentality, corporate or otherwise, or any federal
41 independent agency, including any unit thereof.

42 (5) "Governmental entity" means a state government body or
43 agency, the Legislature, a political subdivision, or the federal
44 government.

45 (6) "Issue of appropriation" means a legislative decision
46 to expend or approve an expenditure of public funds, including
47 decisions that are delegated to an administrator.

48 (7) "Issue of policy" means a change in a law or ordinance
49 or a decision, plan, or course of action designed to influence
50 or determine the subsequent decisions or actions of a

51 governmental entity, to sell or otherwise divest public
52 property, or to regulate conduct. The term does not include a
53 decision or determination of any rights, duties, or obligations
54 made on a case-by-case basis.

55 (8) "Issue of procurement" means a proposal to purchase or
56 acquire property, an interest in property, or services by a
57 governmental entity.

58 (9) "Legislative action" means introduction, sponsorship,
59 testimony, debate, voting, or any other official action on a
60 measure, resolution, amendment, nomination, appointment, report,
61 or other matter.

62 (10) (a) "Lobby" means to influence or attempt to influence
63 an action or decision through oral, written, or electronic
64 communication and, with respect to:

65 1. A state governmental body or agency, is limited to
66 influencing decisions, other than administrative action, that
67 are vested in or delegated to the state governmental body or
68 agency, or an officer thereof;

69 2. The Legislature or other body that is vested with
70 legislative power or the power to propose revisions to the State
71 Constitution, is limited to influencing a procurement decision
72 or any legislative action or nonaction by either the Senate or
73 the House of Representatives, or any committee or office
74 thereof, or by such other body or a committee or office thereof;

75 3. A political subdivision, is limited to influencing

76 legislative actions or other discretionary decisions, but does
77 not include administrative actions; or

78 4. The federal government, is limited to influencing a
79 decision of the legislative or executive branch of the United
80 States government for which registration as a lobbyist is
81 required.

82 (b) The term "lobby" does not mean any of the following:

83 1. Providing or seeking to provide confidential
84 information to be used for law enforcement purposes.

85 2. Appearing as a witness to provide information at the
86 written request of the chair of a legislative body or committee,
87 including a legislative delegation meeting.

88 3. Appearing or offering written testimony under oath as
89 an expert witness in any proceeding for any purpose related to
90 the proceeding and communications related to such testimony.

91 (11) (a) "Lobby for compensation" means being employed or
92 contracting for compensation, for the purpose of lobbying, and
93 includes being principally employed for governmental affairs to
94 lobby on behalf of a person or governmental entity.

95 (b) The term "lobby for compensation" does not include any
96 of the following:

97 1. A public officer carrying out the duties of his or her
98 public office.

99 2. A public or private employee, including an officer of a
100 private business, nonprofit entity, or governmental entity,

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101 acting in the normal course of his or her duties, unless he or
102 she is principally employed for governmental affairs.

103 3. Advice or services to a governmental entity pursuant to
104 a contractual obligation with the governmental entity.

105 4. Representation of a person on a legal claim cognizable
106 in a court of law, in an administrative proceeding, or in front
107 of an adjudicatory body, including representation during
108 prelitigation offers, demands, and negotiations, but excluding
109 representation on a claim bill pending in the Legislature.

110 5. Representation of a person in any proceeding on a
111 complaint or other allegation that could lead to discipline or
112 other adverse action against the person.

113 6. Representation of a person with respect to a subpoena
114 or other legal process.

115 (12) "Other agency head" means the chief administrative
116 employee or officer of a department that is not headed by an
117 executive director or secretary.

118 (13) "Political subdivision" means a county, municipality,
119 school district, special district with ad valorem taxing
120 authority, or any agency or unit thereof.

121 (14) "Principally employed for governmental affairs" means
122 that the principal or most significant responsibilities of the
123 employee is to oversee the employer's various relationships with
124 governmental entities or representing the employer in its
125 contacts with governmental entities.

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(15) "Secretary" means the head of a department who is appointed by the Governor.

(16) "State government body or agency" means any department, agency, commission, council, board, or instrumentality created by the State Constitution or established by general law and any official or officer thereof. The term includes, but is not limited to, a state attorney, a public defender, a criminal conflict and civil regional counsel, and a capital collateral regional counsel.

Section 2. Section 112.3122, Florida Statutes, is created to read:

112.3122 Enforcement and penalties for constitutional prohibition against lobbying by a public officer.—

(1) Section 8(f), Art. II of the State Constitution applies to persons serving as public officers on or after December 31, 2022.

(2) For purposes of administrative enforcement, a violation of s. 8(f), Art. II of the State Constitution is deemed a violation of this part.

(3) If the commission finds that there has been a violation of s. 8(f)(3), Art. II of the State Constitution, the commission must report its findings and recommendations for appropriate action to the Governor who has the power to invoke any of the penalties under subsection (4).

(4) A violation of s. 8(f), Art. II of the State

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151 Constitution may be punished by one or more of the following:

152 (a) Public censure and reprimand.

153 (b) A civil penalty not to exceed \$10,000.

154 (c) Forfeiture of any pecuniary benefits received for
155 conduct that violates this section. The amount of the pecuniary
156 benefits must be paid to the General Revenue Fund.

157 (5) The Attorney General and Chief Financial Officer are
158 independently authorized to collect any penalty imposed under
159 this section.

160 Section 3. This act shall take effect December 31, 2022.